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7 **UNITED STATES DISTRICT COURT**  
8 **WESTERN DISTRICT OF WASHINGTON**  
9 **AT TACOMA**

10 LARRY LLOYD,

11 Plaintiff,

12 v.

13 CHIEF MIKE POWELL, SERGEANT  
14 ED KLAHN, and CORRECTIONAL  
OFFICER PROSE,

Defendants.

NO. C09-5734 BHS/KLS

ORDER DENYING PLAINTIFF'S  
MOTION TO AMEND COMPLAINT

15 Before the court is Plaintiff's motion for leave to amend his complaint. Dkt. 77.  
16 Having carefully considered the motion, Defendants' opposition (Dkt. 85), and balance of the  
17 record, the court finds that the motion to amend should be denied.

18 **BACKGROUND**

19 Plaintiff filed his 42 page civil rights complaint on November 20, 2009. Dkt. 4. On  
20 February 10, 2010, the court entered a Pretrial Scheduling Order directing that all discovery  
21 was to be completed by July 2, 2010, and all dispositive motions filed by August 6, 2010. *Id.*  
22 According to Defendants, Plaintiff has served and Defendants have responded to numerous  
23 written discovery requests. Dkt. 84 (Declaration of Thomas P. Miller in Support of Response  
24 to Plaintiff's Second Motion to Compel).  
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1 On March 1, 2010, the court denied Plaintiff's motion to add the City of Forks Jail and  
2 City of Fork's Community Hospital as defendants because he failed to name any individual  
3 who had violated his constitutional rights and/or identify a policy, practice or custom of these  
4 municipal entities at issue in this case. Dkt. 26, p. 6. On March 10, 2010, Defendants filed a  
5 motion to dismiss Plaintiff's complaint. Dkt. 27. On April 13, 2010, Plaintiff filed his  
6 opposition to that motion and in it he attempted to assert claims of violation of Washington's  
7 Consumer Protection Act, Washington's Product Liability Act and conspiracy under 42  
8 U.S.C. § 1982. Dkt. 42. Defendants filed a motion to dismiss. Dkt. 48. On June 28, 2010,  
9 the court converted Defendants' motion to dismiss to one for summary judgment and ordered  
10 Defendants to submit additional briefing by August 2, 2010. Dkt. 78.<sup>1</sup>

11 On July 12, 2010, ten days after the discovery cut-off, Plaintiff filed his motion to  
12 amend, seeking to assert claims for retaliatory transfer and retaliation for filing grievances  
13 under the First Amendment, violation of Washington Product Liability Act, violation of the  
14 Consumer Protection Act, and a claim under 42 U.S.C. § 1985. Dkt. 77. Defendants filed  
15 their motion for summary judgment and declarations in support on August 2, 2010. Dkts. 86-  
16 90. Plaintiff's second request for an extension of time to file his response and the motion is  
17 noted for October 1, 2010.<sup>2</sup>

## 18 DISCUSSION

19 A party may amend its complaint with leave of the Court, and "leave shall be freely  
20 given when justice so requires." Fed. R. Civ. P. 15(a). Liberality in granting a plaintiff leave  
21 to amend is subject to the qualification that the amendment not cause undue prejudice to the  
22 defendant, is not sought in bad faith, and is not futile. *Bowles v. Reade*, 198 F.3d 752, 757  
23 (9th Cir. 1999) (citing *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987)).  
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25 <sup>1</sup> On July 7, 2010, Plaintiff's claim against Defendant Bokhari were dismissed with prejudice. Dkt. 75.

26 <sup>2</sup> That request is being granted under separate Order, which has not yet been assigned a docket number.

1 “In assessing whether leave to amend is proper, courts consider ‘the presence or  
2 absence of undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by  
3 previous amendments, undue prejudice to the opposing party and futility of the proposed  
4 amendment.’” *United States, ex. rel., Lee v. SmithKline Beecham, Inc.*, 245 F.3d 1048, 1052  
5 (9th Cir. 2001) (cite omitted). *Id.* In deciding whether to grant leave to amend, “it is the  
6 consideration of prejudice to the opposing party that carries the greatest weight.” *Eminence  
7 Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

8 Mr. Lloyd waited three months to file a motion for leave to amend, although it is clear  
9 that he was aware of the additional claims he seeks to assert now in April 2010. He provides  
10 no explanation for this delay. The discovery and dispositive motions deadlines have passed  
11 and Defendants will be prejudiced by allowing the requested amendment. Defendants have  
12 already prepared two motions in response to the Plaintiff’s pleadings – first, their motion to  
13 dismiss, which was converted to a motion for summary judgment by virtue of the materials  
14 presented by Plaintiff in opposition, and now a lengthy summary judgment motion, which is  
15 supported by four declarations. If Plaintiff is allowed to amend, discovery must be reopened  
16 and Defendants will have to mount yet another defense to the newly asserted claims. Counsel  
17 for Defendants states that he has spent tens of hours preparing the motion for summary  
18 judgment. Dkt. 85, p. 3.


19 Plaintiff has provided no explanation for his delay in seeking to amend his complaint;  
20 the discovery and dispositive motion deadlines have passed; Defendants’ dispositive motion is  
21 pending and they will be unfairly prejudiced by the assertion of additional claims.

22 Accordingly, it is **ORDERED**:

23 (1) Plaintiff’s motion for leave to amend (Dkt. 77) is **DENIED**.  
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(2) The Clerk shall send a copy of this Order to Plaintiff and counsel for Defendants.

DATED this 14th day of September, 2010.

  
Karen L. Strombom  
United States Magistrate Judge